

97TH CONGRESS  
1ST SESSION

# S. 854

To promote the orderly conduct of international relations by facilitating the operation of foreign missions in the United States, thereby promoting the secure and efficient operation of United States missions abroad.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, FEBRUARY 16), 1981

Mr. PERCY introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To promote the orderly conduct of international relations by facilitating the operation of foreign missions in the United States, thereby promoting the secure and efficient operation of United States missions abroad.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That (a) the State Department Basic Authorities Act of 1956  
4       is amended by striking out "That the Secretary" in the first  
5       section and inserting in lieu thereof the following:

6       "TITLE I—BASIC AUTHORITIES GENERALLY

7       "SECTION 1. The Secretary".

1 (b) That Act is further amended by adding at the end  
2 thereof the following:

3 "TITLE II—AUTHORITIES RELATING TO THE  
4 REGULATION OF FOREIGN MISSIONS

5 "DECLARATION OF FINDINGS AND POLICY

6 "SEC. 201. (a) The Congress finds that the operation in  
7 the United States of foreign missions and public international  
8 organizations and the official missions to such organizations,  
9 including the permissible scope of their activities and the lo-  
10 cation and size of their facilities, is a proper subject for the  
11 exercise of Federal jurisdiction.

12 "(b) The Congress declares that it is the policy of the  
13 United States to support the secure and efficient operation of  
14 United States missions abroad, to facilitate the secure and  
15 efficient operation in the United States of foreign missions  
16 and public international organizations and the official mis-  
17 sions to such organizations, and to assist in obtaining appro-  
18 priate benefits, privileges, and immunities for those missions  
19 and organizations and to require their observance of corre-  
20 sponding obligations in accordance with international law.

21 "(c) The assistance to be provided to a foreign mission  
22 in the United States shall be determined after due considera-  
23 tion of the benefits, privileges, and immunities provided to  
24 missions of the United States in the country or territory rep-  
25 resented by that foreign mission.

1 "DEFINITIONS

2 "SEC. 202. (a) For purposes of this title—

3 "(1) 'benefit' (with respect to a foreign mission)  
4 means any acquisition, or authorization for an acquisi-  
5 tion, in the United States by or for a foreign mission,  
6 including the acquisition of—

7 "(A) real property by purchase, lease, ex-  
8 change, construction, or otherwise,

9 "(B) public services, including services relat-  
10 ing to customs, importation, and utilities, and the  
11 processing of applications or requests relating to  
12 public services,

13 "(C) supplies, maintenance, and transporta-  
14 tion,

15 "(D) locally engaged staff on a temporary or  
16 regular basis,

17 "(E) travel and related services, and

18 "(F) protective services,

19 and includes such other benefits as the Secretary may  
20 designate;

21 "(2) 'chancery' means the principal offices of a  
22 foreign mission used for diplomatic or related purposes,  
23 and annexes to such offices (including ancillary offices  
24 and support facilities), and includes the site and any  
25 building on such site which is used for such purposes;

1           “(3) ‘Director’ means the Director of the Office of  
2           Foreign Missions established pursuant to section  
3           203(a);

4           “(4) ‘foreign mission’ means any official mission to  
5           the United States involving diplomatic, consular, or  
6           other governmental activities of—

7           “(A) a foreign government, or

8           “(B) an organization (other than an interna-  
9           tional organization, as defined in section 209(b) of  
10          this title) representing a territory or political  
11          entity which has been granted diplomatic or other  
12          official privileges and immunities under the laws  
13          of the United States,

14          including any real property of such a mission and in-  
15          cluding the personnel of such a mission;

16          “(5) ‘real property’ includes any right, title, or in-  
17          terest in or to, or the beneficial use of, any real prop-  
18          erty in the United States, including any office or other  
19          building;

20          “(6) ‘Secretary’ means the Secretary of State;

21          “(7) ‘sending state’ means the foreign govern-  
22          ment, territory, or political entity represented by a for-  
23          eign mission; and

24          “(8) ‘United States’ means, when used in a geo-  
25          graphic sense, the several States, the District of Co-

1       lumbia, the Commonwealth of Puerto Rico, and the  
2       territories and possessions of the United States.

3       “(b) Determinations with respect to the meaning and  
4       applicability of the terms used in subsection (a) shall be com-  
5       mitted to the discretion of the Secretary.

6                   “OFFICE OF FOREIGN MISSIONS

7       “SEC. 203. (a) The Secretary shall establish an Office of  
8       Foreign Missions as an independent office within the Depart-  
9       ment of State. The Office shall be headed by a Director,  
10      appointed by the Secretary, who shall perform his or her  
11      functions under the supervision and direction of the Secre-  
12      tary. The Secretary may delegate this authority for supervi-  
13      sion and direction of the Director only to the Deputy Secre-  
14      tary of State or an Under Secretary of State.

15      “(b) The Secretary may authorize the Director to—

16              “(1) assist agencies of Federal, State, and municipi-  
17      pal government with regard to ascertaining and ac-  
18      cording benefits, privileges, and immunities to which a  
19      foreign mission may be entitled;

20              “(2) provide or assist in the provision of benefits  
21      for or on behalf of a foreign mission in accordance with  
22      section 204; and

23              “(3) perform such other functions as the Secretary  
24      may determine necessary in furtherance of the policy of  
25      this title.

1 "PROVISION OF BENEFITS

2 "SEC. 204. (a) Upon the request of a foreign mission,  
3 benefits may be provided to or for that foreign mission by or  
4 through the Director on such terms and conditions as the  
5 Secretary may approve.

6 "(b) The Secretary may require a foreign mission to  
7 obtain benefits from or through the Director on such terms  
8 and conditions as the Secretary may approve, if the Secre-  
9 tary determines that such action is reasonably necessary on  
10 the basis of reciprocity or otherwise—

11 "(1) to facilitate relations between the United  
12 States and a sending state;

13 "(2) to protect the interests of the United States;

14 "(3) to adjust for costs and procedures of obtain-  
15 ing benefits for missions of the United States abroad;  
16 or

17 "(4) to assist in resolving a dispute affecting  
18 United States interests and involving a foreign mission  
19 or sending state.

20 "(c) The Secretary may require any foreign mission to  
21 comply with such terms and conditions as the Secretary may  
22 determine as a condition to the execution or performance in  
23 the United States of any contract or other agreement; the  
24 acquisition, retention, or use of any real property; or the ap-  
25 plication for or acceptance of any benefit (including any bene-

1 fit from or authorized by any Federal, State, or municipal  
2 governmental authority, or any entity providing public serv-  
3 ices).

4 “(d) Terms and conditions established by the Secretary  
5 under this section may include—

6 “(1) a requirement to pay to the Director a sur-  
7 charge or fee, and

8 “(2) a waiver by a foreign mission (or any assign-  
9 ee of or person deriving rights from a foreign mission)  
10 of any recourse against any governmental authority,  
11 any entity providing public services, any employee or  
12 agent of such an authority or entity, or any other  
13 person, in connection with any action determined by  
14 the Secretary to be undertaken in furtherance of this  
15 title.

16 “(e) For purposes of effectuating a waiver of recourse  
17 which is required under this section, the Secretary may des-  
18 ignate the Director or any other officer of the Department of  
19 State as the agent of a foreign mission (or of any assignee of  
20 or person deriving rights from a foreign mission). Any such  
21 waiver by an officer so designated shall for all purposes (in-  
22 cluding any court or administrative proceeding) be deemed to  
23 be a waiver by the foreign mission (or the assignee of or  
24 other person deriving rights from a foreign mission).

1                   “PROPERTY OF FOREIGN MISSIONS

2           “SEC. 205. (a)(1) The Secretary may require any for-  
3 eign mission to notify the Director prior to any proposed ac-  
4 quisition, or any proposed sale or other disposition, of any  
5 real property by or on behalf of such mission. If such a notifi-  
6 cation is required, the foreign mission (or other party acting  
7 on behalf of the foreign mission) may initiate or execute any  
8 contract, proceeding, application, or other action required for  
9 the proposed action—

10           “(A) only after the expiration of the sixty-day  
11 period beginning on the date of such notification (or  
12 after the expiration of such shorter period as the Sec-  
13 retary may specify in a given case); and

14           “(B) only if the mission is not notified by the Sec-  
15 retary within that period that the proposal has been  
16 disapproved; however, the Secretary may include in  
17 such a notification such terms and conditions as the  
18 Secretary may determine appropriate in order to  
19 remove the disapproval.

20           “(2) For purposes of this section, ‘acquisition’ includes  
21 any acquisition or alteration of, or addition to, any real prop-  
22 erty or any change in the purpose for which real property is  
23 used by foreign mission.



1       “(b) The Secretary may require any foreign mission to  
2   divest itself of, or forgo the use of, any real property deter-  
3   mined by the Secretary—

4               “(1) not to have been acquired in accordance with  
5   this section; or

6               “(2) to exceed limitations placed on real property  
7   available to a United States mission in the sending  
8   state.

9       “(c) If a foreign mission has ceased conducting diplo-  
10   matic, consular, and other governmental activities in the  
11   United States and has not designated a protecting power or  
12   other agent approved by the Secretary to be responsible for  
13   the property of that foreign mission, the Secretary—

14              “(1) until the designation of a protecting power or  
15   other agent approved by the Secretary, may protect  
16   and preserve any property of that foreign mission; and

17              “(2) may authorize the Director to dispose of such  
18   property at such time as the Secretary may determine  
19   after the expiration of the one-year period beginning on  
20   the date that the foreign mission ceased those activi-  
21   ties, and may remit to the sending state the net pro-  
22   ceeds from such disposition.

23              “LOCATION OF FOREIGN MISSIONS

24       “SEC. 206. (a) In order to ensure the fulfillment of the  
25   international obligations of the United States and fulfillment

1 of the policy of this title, and to ensure the orderly develop-  
2 ment of the national capital, the location, height, bulk,  
3 number of stories, and size of any building or other real prop-  
4 erty of a foreign mission in the District of Columbia, and the  
5 provision for open space in and around any such building or  
6 other property, shall be subject to approval by the National  
7 Capital Planning Commission (hereafter in this section re-  
8 ferred to as the 'Commission'). This subsection does not  
9 apply with respect to a building or other real property of a  
10 foreign mission if the Commission determines that the prop-  
11 erty will only be used by a party other than a foreign mission  
12 and will only be used for activities that do not involve the  
13 diplomatic, consular, or other governmental activities of a  
14 foreign mission.

15       “(b) Any determination by the Commission pursuant to  
16 subsection (a) of this section which involves approval of the  
17 location of or a use of real property for a chancery, or in-  
18 volves approval of site and building plans for a chancery,  
19 shall be considered rulemaking under section 553 of title 5,  
20 United States Code, and shall be based solely on the follow-  
21 ing criteria:

22               “(1) the Federal interest;

23               “(2) the chancery is in an area (A) of predomi-  
24 nantly office use, (B) of mixed use, including residen-  
25 tial, commercial, office, or institutional use, (C) of

1 medium or high density residential use, or (D) in rea-  
2 sonable proximity to streets on which existing chanc-  
3 ies are concentrated;

4 “(3) historic preservation (as determined in ac-  
5 cordance with regulations issued by the Commission in  
6 carrying out this section);

7 “(4) the extent to which the area will be served  
8 by public transit to reduce parking requirements;

9 “(5) the extent to which the area will have ade-  
10 quate public facilities, utilities, and services, including  
11 streets, street lighting, water, sewer, electricity, tele-  
12 phone, and refuse collection;

13 “(6) the area is capable of being adequately pro-  
14 tected, as determined by a Federal agency authorized  
15 to perform protective services; and

16 “(7) the municipal interest.

17 Any other determination by the Commission with respect to  
18 real property of a foreign mission pursuant to subsection (a)  
19 of this section shall be based solely on the criteria specified in  
20 paragraphs (1), (3), (6), and (7), and such other criteria as the  
21 Commission may by regulation establish.

22 “(c) In any proceeding with respect to real property of a  
23 foreign mission pursuant to subsection (a) of this section—

24 “(1) a determination by the Secretary as to the  
25 Federal interest shall be given substantial weight; and

1           “(2) a determination by the Mayor of the District  
2           of Columbia as to the municipal interest shall be given  
3           substantial weight.

4           “(d) In any proceeding with respect to real property of a  
5           foreign mission pursuant to subsection (a) of this section, the  
6           final determination with respect to approval of a location or  
7           use or approval of site and building plans shall be made not  
8           later than five months after the date of filing an application  
9           for such approval.

10                               “PREEMPTION

11           “SEC. 207. Notwithstanding any other provision of law,  
12           no act of any Federal agency or of any State or municipal  
13           governmental authority shall be effective to confer or deny  
14           any benefits with respect to any foreign mission contrary to  
15           this title.

16                               “GENERAL PROVISIONS

17           “SEC. 208. (a) The Secretary may issue such regula-  
18           tions as the Secretary may determine necessary to carry out  
19           the policy of this title.

20           “(b) compliance with any regulation, instruction, or di-  
21           rection issued by the Secretary under this title shall to the  
22           extent thereof be a full acquittance and discharge for all pur-  
23           poses of the obligation of the person making the same. No  
24           person shall be held liable in any court or administrative pro-  
25           ceeding for or with respect to anything done or omitted in

1 good faith in connection with the administration of, or pursu-  
2 ant to and in reliance on, this title, or any regulation, instruc-  
3 tion, or direction issued by the Secretary under this title.

4 “(c) For purposes of administering this title, the Secre-  
5 tary may—

6 “(1) employ experts and consultants in accordance  
7 with section 3109 of title 5, United States Code, at  
8 rates not to exceed the rate payable for level IV of the  
9 Executive Schedule, under contracts which may be re-  
10 newed annually;

11 “(2) obtain without regard to the provisions of  
12 law governing appointments in the competitive service,  
13 by appointment or contract (subject to availability of  
14 funds), the services of individuals to provide technical  
15 and professional services required to carry out the  
16 functions of the Director; and

17 “(3) accept details and assignments of employees  
18 of Federal agencies to the Office of Foregin Missions  
19 on a reimbursable or nonreimbursable basis (with any  
20 such reimbursements to be credited to the appropri-  
21 ations made available for the salaries and expenses of  
22 officers and employees of the employing agency).

23 “(d) Contracts and subcontracts for supplies or services  
24 (except for personal services), made by or on behalf of the  
25 Director, shall be made after advertising, in such manner and

1 at such times as the Secretary shall determine to be adequate  
2 to ensure notice and opportunity for competition, except that  
3 advertisement shall not be required when (1) the Secretary  
4 determines that it is impracticable or will not permit timely  
5 performance to obtain bids by advertising, or (2) the aggre-  
6 gate amount involved in a purchase of supplies or procure-  
7 ment of services does not exceed \$10,000. Such contracts  
8 and subcontracts may be entered into without regard to laws  
9 and regulations otherwise applicable to solicitation, negotia-  
10 tion, administration, and performance of government con-  
11 tracts. In awarding contracts, the Secretary may consider  
12 such factors as relative quality and availability of supplies or  
13 services and the compatability of the supplies or services  
14 with implementation of this title.

15 “(e) The head of any Federal agency may, for purposes  
16 of this title—

17 “(1) transfer or loan any property to, and perform  
18 administrative and technical support functions and  
19 services for the operations of, the Office of Foreign  
20 Missions (with reimbursements to agencies under this  
21 paragraph to be credited to the current applicable ap-  
22 propriation of the agency concerned); and

23 “(2) acquire and accept services from the Office of  
24 Foreign Missions, including (whenever the Secretary  
25 determines it to be in furtherance of the purposes of

1       this title) acquisitions without regard to laws normally  
2       applicable to the acquisition of services by such  
3       agency.

4       “(f) Assets of or under the control of the Office of For-  
5       eign Missions, wherever situated, which are used by or held  
6       for the use of a foreign mission shall not be subject to attach-  
7       ment, execution, injunction, or similar process, whether inter-  
8       mediate or final.

9       “(g) Except as otherwise provided, any determination  
10      required under this title shall be committed to the discretion  
11      of the Secretary. Except as provided in the first sentence of  
12      section 206(b), actions taken under the authority of this title  
13      shall not be considered rulemaking within the meaning of  
14      section 553 of title 5, United States Code.

15      “(h)(1) In order to implement this title, the Secretary  
16      may transfer such amounts available to the Department of  
17      State as may be necessary to the working capital fund estab-  
18      lished by section 13 of this Act.

19      “(2) Notwithstanding any other provision of law, all  
20      revenues, including proceeds from gifts and donations, re-  
21      ceived by the Director or the Secretary in carrying out this  
22      title may be credited to the working capital fund established  
23      by section 13 of this Act and shall be available for purposes  
24      of this title in accordance with that section.

1 "APPLICATION TO PUBLIC INTERNATIONAL ORGANIZA-  
2 TIONS AND OFFICIAL MISSIONS TO SUCH ORGANIZA-  
3 TIONS

4 "SEC. 209. (a) The Secretary may make section 206, or  
5 any other provision of this title, applicable with respect to an  
6 international organization to the same extent that it is appli-  
7 cable with respect to a foreign mission if the Secretary deter-  
8 mines, after consultation with the international organization,  
9 that such application is necessary to carry out the policy set  
10 forth in section 201(b) and to further the objectives set forth  
11 in section 204(b).

12 "(b) For purposes of this section, 'international organi-  
13 zation' means—

14 "(1) a public international organization designated  
15 as such pursuant to the International Organizations  
16 Immunities Act (22 U.S.C. 288—288f-2) or other law  
17 authorizing such status; and

18 "(2) an official mission (other than a United  
19 States mission) to such a public international organiza-  
20 tion,

21 including any real property of such an organization or mis-  
22 sion and including the personnel of such an organization or  
23 mission.



1 "PRIVILEGES AND IMMUNITIES

2 "SEC. 210. Nothing in this title shall be construed to  
3 limit the authority of the United States to carry out its inter-  
4 national obligations, or to supersede or limit immunities oth-  
5 erwise available by law. No act or omission by any foreign  
6 mission, public international organization, or official mission  
7 to such an organization, in compliance with this title, shall be  
8 deemed to be an implied waiver of any immunity otherwise  
9 provided for by law.

10 "ENFORCEMENT

11 "SEC. 211. It shall be unlawful for any person to make  
12 available any benefits to a foreign mission contrary to this  
13 title. This section shall be enforceable in any appropriate dis-  
14 trict court of the United States by injunctive or other equita-  
15 ble relief upon application by the Attorney General.

16 "SEVERABILITY

17 "SEC. 212. If any provision of this title or the applica-  
18 tion thereof to any person or circumstance is held invalid, the  
19 remainder of this title and the application of such provision to  
20 any other person or circumstance shall not be affected there-  
21 by."

22 (c) Section 13 of the State Department Basic Authori-  
23 ties Act of 1956 (22 U.S.C. 2684) is amended in the first  
24 sentence by striking out "and" following the semicolon at the  
25 end of clause (3), and by inserting immediately before the

1 period at the end thereof “; and (5) services and supplies to  
2 carry out title II of this Act”.

3 (d)(1) Subparagraph (A) of section 2(1) of the Diplomatic  
4 Relations Act (22 U.S.C. 254a(1)(A)) is amended to read as  
5 follows:

6 “(A) the head of a mission and those mem-  
7 bers of a mission who are members of the diplo-  
8 matic staff or who, pursuant to law, are granted  
9 equivalent privileges and immunities,”.

10 (2) Section 3(b) of such Act (22 U.S.C. 254b) is amend-  
11 ed to read as follows:

12 “(b) With respect to a nonparty to the Vienna Conven-  
13 tion, the mission, the members of the mission, their families,  
14 and diplomatic couriers shall enjoy the privileges and immu-  
15 nities specified in the Vienna Convention.”.

16 (3) Section 4 of such Act (22 U.S.C. 254c) is amend-  
17 ed—

18 (A) by inserting “the mission, the” immediately  
19 after “immunities for”; and

20 (B) by striking out “of any sending state”.

21 (4) Section 1364 of title 28, United States Code, is  
22 amended by striking out “as defined in the Vienna Conven-  
23 tion on Diplomatic relations” and inserting in lieu thereof  
24 “within the meaning of section 2(3) of the Diplomatic Rela-  
25 tions Act (22 U.S.C. 254a(3))”.

1       (e) The Act of June 20, 1938 (Public Law 684, Seven-  
2 ty-fifth Congress; 52 Stat. 797) is amended—

3           (1) in section 6 by striking out “(a)”, and by strik-  
4 ing out subsections (b), (c), (d), and (e); and

5           (2) in section 16 by adding at the end thereof the  
6 following new sentence: “In addition, the provisions of  
7 this Act shall not apply to any real property to which  
8 section 206(a) if the State Department Basic Authori-  
9 ties Act of 1956 (relating to foreign missions) is appli-  
10 cable.”.

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